

REMARKS

The Office Action mailed August 14, 2008, has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Rejection(s) Under 35 U.S.C. §102

Claims 55-60 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Halverson (U.S. pat. no. 6,071,260). Applicants respectfully traverse.

Claim 55, from which claims 56-60 depend, recites cutting fat that has extruded through at least one hole in a non-convex surface on a side of the surface opposite the fatty tissue. This feature is not disclosed in Halverson. The device of Halverson relies entirely on ultrasonic energy to cavitate or emulsify fatty tissue. It does not employ cutting of the tissue in the manner claimed, and in fact teaches away from cutting by boasting that “there is reduced tearing stretching or heating of the tissue and no removing of chunks of tissue either due to cutting or high suction pressure.”¹

It will be appreciated that, according to the M.P.E.P., a claim is anticipated under 35 U.S.C. §102 only if each and every claim element is found, either expressly or inherently described, in a single prior art reference.² The aforementioned reasons clearly indicate the contrary, and withdrawal of the 35 U.S.C. §102 rejection based on Halverson is respectfully urged.

Rejection(s) Under 35 U.S.C. §103(a)

Claims 55, 56 and 58060 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Halverson. Applicants respectfully traverse.

As explained above, Halverson fails to disclose, and in fact teaches away from, cutting fat that has extruded through at least one hole in a non-convex surface on a side of the surface opposite the fatty tissue. The prior art discussion in the background section of Halverson to

¹ Halverson, col. 7, ll. 8-11, emphasis added.

² Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

which the Office Action makes reference does not cure this defect of Halverson, because it simply describes how tissue is ripped from the body by prior art devices. The manner in which such ripping is performed is not detailed, and there is simply no disclosure of cutting fat that has extruded through at least one hole in a non-convex surface on a side of the surface opposite the fatty tissue in the manner instantly claimed. Thus even if the express teaching away from the invention by Halverson is ignored, the prior art discussion therein does not rise to the level of a properly enabled disclosure or suggestion of Applicants' invention.

Conclusion

In view of the preceding discussion, Applicants respectfully urge that the claims of the present application define patentable subject matter and should be passed to allowance.

If the Examiner believes that a telephone call would help advance prosecution of the present invention, the Examiner is kindly invited to call the undersigned attorney at the number below.

Please charge any additional required fees, including those necessary to obtain extensions of time to render timely the filing of the instant Amendment and/or Reply to Office Action, or credit any overpayment not otherwise credited, to our deposit account no. 50-3557.

Respectfully submitted,
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